TENNESSEE
DEPARTMENT OF
ENVIRONMENT AND CONSERVATION
STATE REVIEW FRAMEWORK REPORT
FEDERAL FISCAL YEAR 2006

I. Executive Summary

Introduction

The Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and other state representatives have jointly developed a method to assess state performance in the enforcement and compliance assurance program. This report reflects the Fiscal Year (FY) 2006 review by EPA Region 4 of the Tennessee Department of Environment and Conservation (TDEC) compliance and enforcement program utilizing the State Review Framework (SRF). This review has been a collaborative effort between the Region and the State and captures both successes as well as any identified areas that need improvement. As this is the first review of this type for TDEC, this report will serve as a baseline review. Future reviews will look at performance as a comparison to the level documented in this review.

The purpose of the SRF assessment is to provide consistency in the level of core enforcement activity and performance thus in environmental protection across the country. It provides a consistent tool for EPA Regions to use in overseeing state enforcement program performance as well as to provide the basis for a consistent mechanism for EPA Regions to provide flexibility to states which can demonstrate an adequate core enforcement program.

The review consists of 12 critical elements which compare actual compliance and enforcement practices in the Clean Air Act (CAA) Stationary Sources Program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program, and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program with EPA policies and guidance. The 12 evaluation areas posed by this Framework are consistent with evaluation areas delineated in the1986 EPA guidance memorandum signed by Jim Barnes entitled *ARevised Policy Framework for State /EPA Enforcement Agreements.@* Additionally the Framework utilizes existing program guidance, such as national enforcement response policies, compliance monitoring policies, and civil penalty policies or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide definitions of an acceptable level of performance. There is also an optional 13th element. EPA and ECOS encourage the use of the 13th element to ensure the review takes a measure of the full range of program activities and results. These components can add meaningful input into a state=s overall performance and program. Examples of topics could include program areas such as compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome measures or environmental indicators that go beyond the core program activities covered in Elements 1 through 12.

The enforcement and compliance program is administered by the TDEC. The TDEC headquarters office in Nashville; eight TDEC field offices, as well as four local CAA agencies, implement the State's compliance and enforcement program. The largest local CAA agency is the Memphis-Shelby County Health Department and the review of that program is included in this report.

TDEC coordinated the file review effort on a statewide basis. The review was not directed at assessing the capabilities of any individual TDEC District offices or local CAA program, rather to assess the State enforcement and compliance program as a whole. Although the TDEC enforcement program was reviewed on a statewide basis, EPA Region 4's review placed emphasis on ensuring an appropriate representation of each of the various entities. Program specific data utilized in the SRF was obtained from the OECA SRF website.

Process Followed in the Review

The EPA Region 4 evaluation of TDEC=s core enforcement program was conducted by staff from the Region=s Office of Environmental Accountability (OEA) and the CAA enforcement program using Elements 1-12 of the SRF, described above. Each media technical authority from OEA and staff from the CAA program worked with their counterparts at the State to determine the number of files to be reviewed. The number of files to be reviewed was determined using the file selection protocol in the SRF Implementation Guide, and was based on the number of facilities in the universe, the number of inspections performed and the level of enforcement activity in each program at a statewide level. TDEC collected and made available all selected files at their central office in Nashville. For each program, files were randomly selected within a representation of types or program areas. The scope of review generally evaluated the State against FY2006 agreements and outputs such as grant workplans or MOAs. For those instances where more than one year of data was required, information from FY2006 and years prior to FY2006 was used. The report contains findings of the review for each program, and areas of concern with an explanation of these concerns along with recommendations for resolution.

Information Considered From Other Reviews and Other Sources

For each of the compliance and enforcement programs, Region 4's OEA staff obtained those documents that identified negotiated compliance and enforcement commitments with TDEC. These documents were reviewed for consistency with national and regional policy and guidelines as well as commitments that may differ from OECA expectations.

Summary

The State, as a whole, has an effective environmental compliance and enforcement program. In many instances, TDEC exceeded national averages identified in the OECA SRF Data Metrics, across all media programs. These data metrics compared Tennessee data to national figures and standards such as inspection coverage, identification of significant noncompliers, etc. TDEC's high level of inspection coverage and violation identification rate is indicative of an active field presence for their compliance and enforcement program. EPA Region 4's review of the TDEC enforcement program has determined that the State has a thorough understanding of its media enforcement programs (i.e., CAA- Stationary Source program, CWA-NPDES program and RCRA-Subtitle C hazardous waste program), and is successfully implementing these delegated enforcement programs.

The report includes recommendations for improvement in several areas. The three overarching issues most significant for TDEC and the Memphis-Shelby County Health Department include (1) the timely resolution of significant noncompliers, (2) the consideration and documentation of economic benefit in penalty calculations, and (3) the degree to which national databases are updated, both timely and accurately.

The Region will continue to work closely with TDEC to implement the recommendations made in this report. The Region will incorporate the recommendations in this report into the National OECA SRF Tracker System along with agreed upon time lines, milestones, and any tracking agreements, such as Memorandum of Agreement (MOA), Performance Partnership Agreement (PPA), or Performance Partnership Grant (PPG), as well as provide timely updates as to the progress made in the implementation of the recommendations.

II. Media Program Element Reviews

PROGRAM: Clean Air Act (CAA) Stationary Source Enforcement Program
State of Tennessee

Introduction

The CAA portion of this report entailed a three-day review of files (June 18-21, 2007) and an analysis of enforcement data at Tennessee's Division of Air Pollution Control (TDAPC). The period of time for this review was FY2005-2006, the most recent period of complete data when the review began. The SRF file selection protocol was used to select the 30 files to be reviewed. The selected list of files was submitted to TDAPC for concurrence to determine that the selected sources were representative of the air enforcement program. TDAPC informed us that five of the sources selected had either closed or had become true minor sources since their FY2006 Full Compliance Evaluation (FCE). Since these five sources were formerly major and had a FCE performed in the two year period of this review, there were no changes to the initial list of 30 sources. Of the 30 files reviewed, 24 were Title V major sources and six were synthetic minor sources. Fifteen of the 30 files reviewed were tracked in the air facility subsystem (AFS) as high priority violators (HPV) at some point during FY2005-2006.

The data analysis consisted of reviewing information generated by the OECA SRF CAA data metrics. The data metrics consist of a standard retrieval of data from AFS and it has information in over 40 categories of data. The data metrics pull was done on June 13, 2007, and it covered FY2005-2006.

The findings and recommendations that follow reflect the 12 elements of the SRF that were reviewed. These 12 elements encompass four review areas: inspections, enforcement activity, annual state/EPA agreements and database integrity. Also encompassed in this report are the results of the CAA Compliance Monitoring Strategy (CMS) evaluation that was done in conjunction with the SRF. The CMS evaluation appears first followed by the SRF results.

State of Tennessee FY2006 CAA CMS Evaluation

Organization of TDAPC

TDAPC is managed by the Director's office, which oversees the actions of six programs. The programs are Enforcement, Permitting and Regulatory Development, Compliance Validation, Mobile & Air Resources Management, Field Services, and Technical Services.

- The Enforcement Program validates HPV determinations and writes Orders. There are approximately seven positions in this program.

- The Permitting and Regulatory Development Program writes construction and operating permits and Orders, reviews annual certifications and periodic reports, drafts notices of violation (NOV), maintains the emissions inventory, and is responsible for conducting all HPV determinations. This program is comprised of four subsections: West Tennessee, Middle Tennessee, East Tennessee, and Emissions Inventory. There are approximately 13 positions in each of the geographical subsections and three positions in the Emissions Inventory subsection.

- The Compliance Validation Program conducts all stack test plan reviews and test result report reviews and has a staff of stack testers who go in the field and conduct stack testing for TDAPC. In addition, this program conducts and reviews continuous emission monitoring system (CEMS) audits and writes NOVs when violations are identified in these areas. There are approximately nine positions in this program.

- The Mobile & Air Resources Management Program composes NOVs related to asbestos violations and is responsible for all AFS data entry, as well as other duties unrelated to enforcement. There are approximately 14 positions in this program.

- The Field Services Program is responsible for conducting all compliance inspections. There are seven Environmental Field Offices (EFO) located in Chattanooga, Columbia, Cookeville, Jackson, Johnson City, Knoxville, and Nashville. Each EFO conducts inspections in their area, writes the inspection reports, and drafts NOVs for violations identified in the field. There are approximately 38 positions in this program.

- The Technical Services Program is responsible for all monitoring and related data (AIRS-AQS). There are approximately 12 positions in this program.

Air Facility Subsystem (AFS)

AFS is updated by the state at least monthly. The HPV and compliance data is entered into AFS by two employees in the Mobile & Air Resources Management Program after receiving updated information on the sources from the Enforcement Program. TDAPC has created a process that corrects previously identified data quality issues.

Compliance Assurance Agreement Performance

Compliance with TDAPC's annual Air Planning Agreement is tracked semiannually by EPA and the data is entered into the performance agreement tracking program. At the time of the SRF evaluation, there were 248 major sources, 382 conditional major sources, and 1,713 minor sources in the state of Tennessee. TDAPC commits to inspecting all of their major sources and conditional major sources (also known as SM sources) each year except those sources in the four local air agencies. This commitment exceeds EPA's CMS Guidance which states that major sources are only required to be inspected once every 2 years and synthetic minor sources once every 5 years. Minor sources are inspected as time allows. There is a written inspection protocol and TDAPC does take action against facilities for noncompliance reported in their Title V self-certifications. In addition, TDAPC makes an effort to identify sources operating without a permit through field inspections, drive bys, complaints, and newspaper articles. In addition, when a new MACT is promulgated, the source will include a notice of their applicability in their permit renewal application and the new MACT requirements are added to the permit during the renewal process. When a violation is identified during an inspection, the company is informed during the inspection and then issued an NOV.

Compliance Assistance

TDEC has the Office of Environmental Assistance which is dedicated to compliance assistance. The educational and technical outreach programs consist of a used oil program, assisting companies to come into compliance, providing advice on using the Enforcement and Compliance History Online (ECHO) tool, compliance incentives, and instruction on how to comply with various regulations. In addition, TDEC has a pollution prevention (P2) program and a self-reporting policy which was written in 2001. The self-reporting policy allows companies to self-report violations.

Source Testing

TDAPC evaluates 100% of stack tests conducted by sources, which is, on average, about 70 tests each year. The Compliance Validation Program utilizes a computer program that recalculates all the data provided by the company to ensure that all calculations are correct. TDAPC also conducts stack testing. The number of tests conducted each year is based on the program's workload.

Enforcement

TDAPC's procedures for enforcement are to draft a NOV followed by an Order. The company can then appeal the Order to the Air Pollution Control Board, where it may be amended. Finally, the payment is made and, if applicable, the supplemental environmental project (SEP) is executed. If the schedules in the Order are not maintained, the company is penalized. Penalties are calculated in accordance with the TDAPC penalty guidance document. TDAPC utilizes EPA's SEP policy and the Enforcement Program tracks compliance with the SEPs. The requirements of the SEP are included in the associated Orders. When a case is

appealed, it is referred to the Office of General Counsel (OGC) for judicial action. OGC evaluates all referred cases, evaluates the case facts and decides if judicial action is required. Credible evidence used by TDAPC to determine violations includes CEMS data, monitoring data, stack tests, records of compliance with permit conditions and other recordkeeping.

The Air Pollution Control Board's overall impact on TDAPC's enforcement decisions is that TDAPC utilizes previous board decisions to make current and future decisions regarding the penalty amounts. While the Board does not create policy through their decisions, TDAPC tries to discern the will of the board. They do this in order to maintain consistently in such a way that if a penalty is contested and appealed to the Board, the Board would uphold the penalty assessed by TDAPC. This process also inspired an option that TDAPC offers companies in violation called an Agreed Order. An Agreed Order is a negotiation tool through which TDAPC and a Respondent can agree to settle for a lower penalty amount to prevent the Order from going before the Board. In general, an Agreed order allows for a 25% reduction to penalty or the company can agree to pay 50% cash up front and 50% contingent on continued compliance.

Files

The files reviewed at TDAPC were well organized, complete, and up-to-date. The files included the companies' progress reports, current compliance status, inspection reports and enforcement history, including all NOVs, Technical Secretary's Orders, Final Board Orders referrals, facility responses and penalties.

Training, Coordination, and the Availability of Resources

TDAPC addresses training of their employees through both in house training and EPA courses. Regarding the in-house training, senior management conducts information training and a test is administered for the permitting section following their in-house trainings. Enforcement staff is trained through monthly meetings and sent to classes outside of the agency (average of two per year). Field inspectors are also sent to courses outside of the agency.

Coordination between the Sections is handled in-house because all of the sections are in the same building and they talk to each other. The only exception is the field offices which are located throughout the state. This communication is handled by placing a phone call to the field inspector if an employee from another section needs to talk to an inspector, and vice versa. There is no forced chain of command regarding internal communication, all of the staff contact each other directly. Regarding coordination with the local agencies, Hubie Stevens is employed by TDAPC as the local agency coordinator, and all formal communication from the state to the local agencies goes through him.

Regarding funding, the Title V (TV) program is completely self-sufficient. Costs not related to the TV program are funded though permit fees for non TV sources, the penalty money collected by the enforcement section for TV and non-TV sources, an EPA grant, and some state appropriations.

Compliance/Enforcement issues identified

The following issues were identified that have the potential to impact the ability of TDAPC to meet compliance and enforcement objectives:

- TDAPC believes that AFS is not user-friendly and is difficult to read, particularly the fact that AFS cannot be searched or cross-referenced.
- TDAPC is currently trying to fill several vacancies.

The current vacancies at TDAPC are six permitting vacancies, two field inspectors, and one vacancy in enforcement. Regarding permitting, TDAPC had 6 vacancies at the beginning of the year, they hired a total of ten new people in the last year, and due to circumstances beyond TDAPC's control (including turnover, staff relocating, retirement, etc.) they still have six vacancies currently remaining.

In addition, a factor that slows the process of filling vacant positions is that when a position becomes vacant, the position is automatically frozen and the hiring manager needs to request a freeze waiver. After the position is unfrozen, generally, staff are promoted from within to fill higher-level positions and then the position that person left becomes a new vacancy. This process of freezing, un-freezing, and internal promotion continues until finally the only positions left to fill are entry level positions and they are having trouble finding qualified people to fill those positions. The effect of these ongoing vacancies is that it makes it harder to get permits out, takes longer to get reports reviewed, and the newly hired people require training and cannot immediately be productive.

TDEC CAA SRF Element-by-Element Description

1. Degree to which state program has completed the universe of planned inspections/evaluations (addressing core requirements and federal, state and regional priorities).

Findings:

FCEs at Title V major sources -The national goal in EPA's Compliance Monitoring Strategy (CMS) guidance is a FCE at 100% of major sources over a two-year period. In TDAPC's CMS Plan, they committed to FCEs annually at their major sources. According to the SRF data metrics, FCEs were conducted at 97% of major sources during FY2005-2006 (246 of 255 major sources). The dynamic nature of major source universes is the probable explanation for the FCE coverage not attaining 100%.

FCEs at SM sources: The national goal in the CMS guidance is 100% FCE coverage at SM sources over five years. For FY 2002-2006 (the most recent five year period of data), the SRF data metrics show FCEs performed at 99.4% of SM sources (357 out of 359 SM sources). In the annual CMS plan, TDAPC commits to annual inspections of all their SM sources.

Title V Annual Compliance Certifications (ACCs) received and reviewed: EPA's

CMS Guidance requires that 100% of Title V ACCs are to be reviewed annually. According to the data metrics, 63% of Title V ACCs (133 of 212) were received and reviewed in FY2006. TDAPC responded that the ACCs would be reviewed annually in the future.

Sources with "Unknown" Compliance Status Designations: The data metrics showed no sources with an "unknown" compliance status. An "unknown" compliance status is usually associated with a source going longer than two succeeding years without a FCE being recorded in AFS.

Citation of information used for this element

- TDAPC CMS Plans
- OECA SRF data metrics (source of data is AFS)
- EPA's CMS Guidance (dated April 25, 2001)

Recommendations: It is recommended that TDAPC examine why some ACCs are not being submitted and/or are not reviewed, and submit to EPA recommendations for achieving this goal.

TDEC Response: The state is now using the web-based Oracle Application Express® application to track FCEs and enhance the FCE coverage percentage. The AFS data management group will be able to provide reports on a monthly basis which show the permitting managers the ACCs that have been received but not reviewed, as well as the ACCs that are due but not received. This should allow the permitting managers to better coordinate their resources and time in an effort to meet EPA's goal of 100% of ACCs received and reviewed.

2. Degree to which inspection reports and compliance reviews document inspection findings, including accurate description of what was observed to sufficiently identify violations.

Findings: Thirty source files were reviewed to evaluate how TDAPC documents a completed FCE. Twenty-four of these source files were major sources and six were synthetic minor sources. All elements of an FCE and compliance monitoring report (CMR) were examined. These elements consist of general and facility information about the source; a description or listing of all applicable requirements for the source; an inventory and description of regulated units and processes; information on previous enforcement actions; compliance monitoring activities such as compliance assistance; reviews of all required reports such as Continuous Emission Monitoring System (CEMS) reports, malfunction reports, the ACC and semi-annual monitoring reports; assessments of control device and process operating conditions, process parameters and control equipment performance parameters; reviews of facility records, operating logs and visible emissions observations; reviews of stack test reports and findings/recommendations relayed to the source during the compliance evaluation (see EPA's April 25, 2001, CMS guidance for a description of these terms).

State and local CAA agencies may document FCE and CMR elements in their files as they deem appropriate. TDAPC does this through information kept in their source files. Of the 30 files reviewed, all contained general and facility information about the source, a description of applicable requirements and an inventory of regulated units and processes. In some cases this

was found in the Title V permit and in other cases in the inspection report. As to documentation of all FCE elements, the results varied. Twelve of the 30 files examined had all FCE elements documented. Six of the 30 files had all elements documented but some elements were completed after the recorded date of the FCE. The most common examples of post FCE document reviews were reviews of the semi-annual monitoring report or ACCs. EPA's guidance says all elements must be documented within the fiscal year that the FCE commitment is made. Because it could not be determined when the FCE began, it's possible all elements were completed in time and it is just a matter of TDAPC being cognizant about recording the FCE date.

The most serious FCE documentation issues were found in the remaining 12 files (40% of total) reviewed. In those files, one or more of the FCE elements were not documented. Examples of missing elements were no review of the semi-annual monitoring reports (Title V and MACT), the ACC, excess emission reports, stack tests and start-up, shutdown and malfunction reports.

Citation of information used for this element

- TDAPC's source files
- EPA's CMS guidance (dated April 25, 2001)

Recommendation: It is recommended that TDAPC develop and implement a plan that ensures all elements of a FCE are consistently completed and documented in the source files. Proper recording of the FCE should be part of this plan. TDAPC should consider a FCE checklist in this plan.

TDEC Response: TDEC created an Oracle Application Express® to address the shortcomings of the current paper-based FCE tracking system. This web-enabled process will allow field inspection staff and central office enforcement and AFS staff to view, edit, and track FCE-related data in real time. The results of the tracking process, after the FCE has been achieved, can be included in the facility file as a checklist. Upon request, the application description submitted to the TDEC Information Systems Division (ISD) can be provided. This application is currently being beta-tested and will be utilized for the 2007-2008 inspection year.

3. Degree to which inspection reports are completed in a timely manner, including timely identification of violations

Findings: Of the thirty (30) inspection reports found in the files, 25 reports (83%) were written within 60 days of the inspection. The remaining five reports were finalized between 75-136 days from the day of the inspection.

The timeliness of completing written inspection reports is important as it ensures that HPVs that might be a result of an inspection get identified and addressed in a timely manner. There is no established guidance requirement for the timeliness of CAA inspection reports.

Citation of information used for this element:

- TDAPC's source files

Recommendation: None.

4. Degree to which HPVs are reported to EPA in a timely and accurate manner.

Findings: According to the data metrics, TDAPC's HPV discovery rate was 11.2% based on FCE coverage at CAA majors in FY2006 (national average 9.7%). The discovery rate is the number of HPVs identified by the state in the fiscal year divided by the number of major sources with an FCE performed in that fiscal year. In addition, the HPV discovery rate based on operating major sources in the same fiscal year was 7.3% (national average 4.7%). Discovery rate in this case means HPVs identified by the state in the fiscal year divided by the number of operating major sources. TDAPC performs above the national average in identifying HPVs.

Citation of information used for this element:
- OECA SRF data metrics

Recommendation: None.

5. Degree to which state enforcement actions include required corrective or complying actions (injunctive relief) that will return facilities to compliance in a specific time frame.

Findings: Of the 30 TDAPC sources files reviewed, 19 contained state enforcement actions (e.g., state orders). In all cases the facilities returned to compliance.

Citation of information used for this element:
- TDAPC's source files

Recommendation: None

6. Degree to which a state takes timely and appropriate enforcement actions, in accordance with policy related to specific media.

Findings: According to the data metrics, in FY2006, 19 of TDAPC's 61 HPVs (31%) went unaddressed longer than 270 days (see data metrics for names of the 19 sources). EPA reviewed 15 source files that were identified as being a HPV, and 100% were addressed within 270 days. The national goal is for no HPVs to go unaddressed beyond 270 days.

In pursuing the reason for the data metric statistic, TDAPC indicated that the percentages were likely correct. Resolution of HPVs is a topic in the monthly calls between TDAPC and EPA Region 4, to discuss the identification of new HPVs and resolution of active HPVs.

Citation of information used for this element:
- OECA SRF data metrics
- TDEC CAA Source files

Recommendation: It is recommended that TDAPC examine their HPV resolution practices and develop/implement a plan that will ensure conformance with the enforcement action timelines of the HPV policy.

TDEC Response: Due to the increased emphasis of management to resolve HPVs, TDAPC has had fewer HPVs go over 270 days after several changes were implemented. Unfortunately, this improvement is not reflected in the FY2006 data used in the SRF evaluation. The changes include monthly updates to senior management, use of red folders for HPVs and training for all staff drafting Orders. Additionally, the Division is in the process of streamlining the timeline between an NOV being issued and an HPV being assigned for an Order to be drafted and issued. An additional result of the SRF process was the discovery of a significant flaw in the current internal procedure for tracking HPVs. Up to this point, the TDEC Enforcement and AFS workgroups have been exchanging reports with little or no discussion in between. While these reports served the needs of the group that sent them, they were subject to misinterpretation by the group that received them. As a result of this discovery, TDEC is in the process of modifying each report to make it more useful to the receiving section, and the reports will be discussed on at least a monthly basis, rather than assuming that the current HPV status is clear. This should greatly improve the integrity of the HPV data we transmit to AFS.

7. Degree to which the State has a penalty policy that includes both gravity and economic benefit calculations.

Findings: The TDAPC follows their *General Enforcement Penalty Guidelines* when determining an appropriate penalty. These Guidelines contain six state statutory factors, including an economic benefit factor. Examples of economic benefit cited in their Guidelines include not having to pay annual emission fees for sources that were constructed without a permit and failure to install control equipment.

Following the review of the draft SRF report, TDAPC reports that procedures have been implemented that require all enforcement programs to conduct an economic benefit review for all enforcement cases. Enforcement files will clearly document that economic benefit was considered. If an economic benefit penalty was included in the penalty, the file will show how it was calculated, and if not included in the penalty, the file will state the reason for not including an economic benefit component.

Citation of information used for this element:

- General Enforcement Penalty Guidelines

Recommendation: None

8. Degree to which state documents both gravity and economic benefit in accordance with any applicable penalty policy.

Findings: Of the 19 state enforcement actions found in the files reviewed, all contained penalties. TDAPC uses a penalty computation worksheet for HPV violations and it addresses both gravity and economic benefit components. All 19 files contained the penalty computation worksheet, although three penalties were for non HPVs. Of the 19 penalties, 13 addressed the

gravity component and economic component where applicable and six addressed the gravity component but were silent on economic benefit. Two of the six penalty calculations should have addressed economic benefit. One enforcement order required installation of a measuring device and the other Order included violations of annual emission cap exceedences, and should have collected emission fees as economic benefit.

Citation of information used for this element:

- TDEC CAA Source Files
- TDAPC's Penalty Computation Worksheet

Recommendation: It is recommended that TDAPC propose and implement a plan that ensures that the economic benefit component of a penalty calculation worksheet is considered and documented in the file.

TDEC Response: TDAPC now requires an economic benefit checklist to be completed and attached to each penalty memo drafted after September 1, 2007.

9. Degree to which enforcement commitments in the PPA/PPG/categorical grants (written agreements to deliver a product/project at a specified time), if they exist, are met and any products or projects are completed.

Findings: TDAPC has an annual Air Planning Agreement (APA) with Region 4. The APA is funded through CAA §105 grant dollars and principally applies to non-major sources and asbestos demolition/renovation projects. Activities related to Title V sources (i.e., major sources) are funded through industry fees and thus are not eligible for grant dollars. With respect to the Monitoring and Enforcement component of the FY2006 APA, TDAPC committed to the following:

- Ensure that AFS contains accurate and timely data on the minimum data elements for synthetic minor sources by direct entry and comply with the direct access procedures or through batch updating process (computer uploading);
- Resolve violations of any rule for which EPA has delegated authority to the state for non-major MACT sources and synthetic minor sources;
- Utilize the pollution prevention database to enhance pollution prevention outreach activities during compliance inspections;
- Inspect 25% of all NESHAP asbestos demolition/renovation projects;
- Observe asbestos work practices in progress whenever possible to assess compliance;
- Since the ACTS/NARS database is no longer available, the state is to report the following asbestos NESHAPS activities at least 45 days after each fiscal quarter: (1) number of notifications received, (2) number of inspections, (3) non-notifier activity if applicable, (4) number of non-penalty enforcement actions, (5) number of enforcement actions with an assessed penalty, and (6) total penalty assessment;
- Maintain a state health and safety plan for asbestos demolition/renovation inspectors;
- Recommend cases, where appropriate, and provide support to the EPA Criminal Enforcement Program.

TDAPC has met these deliverables based upon the overview the region does on a semi-annual basis using the region's grant tracking system.

Citation of information used for this element:
- TDAPC's FY2006 APA
- Data from EPA Region 4's APA tracking system

Recommendation: None

10. Degree to which Minimum Data Requirements (MDRs) are timely (focus on integrity of HPV data)

Findings: MDRs represent the minimum amount of data that EPA believes nationally is necessary to oversee the national stationary source compliance monitoring and enforcement program. Examples of the 26 elements that comprise the MDRs are recording of FCEs, HPVs, stack test results, compliance status and Title V annual compliance certification reviews. In examining the MDRs for the 30 TDAPC files during the review, no significant data deficiencies were noted.

One specific item that the SRF analyzes is the timely entry of HPV MDRs into AFS. Timely data entry is defined as the HPV being entered into AFS within 60 days of when the source was designated as an HPV (e.g., day zero). TDAPC's data metrics for FY2006 show 37.2% HPVs were entered more than 60 days following their day zero.

Citation of information used for this element:
- EPA's minimum data requirements
- OECA SRF data metrics

Recommendation: It is recommended that TDAPC propose and implement a plan to ensure that HPVs are entered into AFS within 60 days of day zero.

TDEC Response: TDAPC has streamlined the time frame between the NOV being drafted and the HPV being entered into AFS. Prior to the SRF evaluation, NOVs were sent to the Enforcement Program once per month. Currently, all NOVs to permitted facilities are being sent to the Enforcement Program as they are issued. The Division anticipates that this change will allow HPVs to be entered into AFS within 60 days of day zero.

11. Degree to which MDRs are accurate (focus on plant compliance status)

Findings: This metric analyzes sources carried as HPVs compared to their AFS plant compliance status. HPVs should be shown in AFS as in non-compliance until they are concluded. The data metrics for Tennessee indicates that 96% of the HPVs were being carried in non compliance.

With respect to stack test data, the data metrics show 146 of 148 stack tests (99%) performed in FY2006 having their pass/fail results coded into AFS. When asked about these

slight discrepancies in AFS, TDAPC said they strive for AFS data to be timely and accurate.

Citation of information used for this element

- OECA SRF data metrics

Recommendation: None

12. Degree to which the minimum data requirements are complete, unless otherwise negotiated by the region and state or prescribed by a national initiative.

Findings: The goal of this metric was to ensure agreement between the state/local air agencies and the region on the completeness of the MDRs being reported into AFS and, where discrepancies exist, to develop an action plan for making appropriate corrections. Specific MDR elements examined included: Title V universe; source count of major, synthetic minor and NESHAP minor sources; universe of new source performance standard (NSPS), NESHAP and MACT sources; completeness of FCEs and partial compliance evaluations (PCEs) being reported; historical non-compliance counts; completeness of sources receiving NOVs; completeness of HPV reporting; completeness of enforcement actions being reported; completeness of penalty dollars assessed by state and number of major sources missing CMS policy applicability. TDAPC was requested to comment on the adequacy of the data metric information being generated by AFS. No issues were uncovered.

Citation of information used for this element

- AFS data

Recommendation: None

Program: CAA Stationary Source Enforcement Program – Memphis-Shelby County Health Department

Introduction

The CAA SRF review of the Memphis-Shelby County Health Department (MSCHD) entailed a file review (June 26-27, 2007) and an analysis of data from the MSCHD's CAA compliance and enforcement program. The period of time for this review was FY2005-2006, the most recent period of complete data when the review began. The file selection protocol from the OECA SRF guidance was used to select the 15 files reviewed. The selected list of files was submitted to MSCHD for concurrence with respect to these files being representative of the air enforcement program. Two files were substituted due to one source having moved from the county and the other source becoming a Class B minor source. Of the 15 files reviewed, 10 were Title 5 major sources and 5 were synthetic minor sources. Three of the 15 files reviewed were HPV sources at some point during FY2005-2006.

The data analysis consisted of reviewing information generated by the SRF data metrics. The data metrics consists of a standard retrieval of data from the Air Facilities System (AFS) and it analyzes over 40 categories of data. The data metrics pull was done in May 2007 and it covered FY2005-2006.

The findings and recommendations that follow reflect the 12 elements of the SRF that were reviewed. These 12 elements encompass four review areas: inspections, enforcement activity, annual state/EPA agreements and database integrity. Also, included in this report are the results of the Compliance Monitoring Strategy (CMS) evaluation that was done in conjunction with the SRF. The CMS evaluation appears first followed by the SRF results.

MSCHD's FY2006 CAA CMS Evaluation

Organizational Structure

The MSCHD's Pollution Control section consists of five air program branches: Field and Support Services, Air Monitoring, Major (Title V and Synthetic Minor) Sources, Minor Sources, and Air Planning Branch. The Major Sources branch handles all of the enforcement and permitting for Title V and synthetic minor sources.

MSCHD has full jurisdiction over the sources in Shelby County, and MSCHD adopts air pollution regulations from the state of Tennessee regulations. The state of Tennessee audits MSCHD every two years and includes frequent discussions regarding the Title V program.

Compliance and Enforcement Strategy

The major source group at MSCHD is responsible for implementing the compliance assurance and enforcement strategy. At the time of the CMS review in June of 2007, MSCHD had 33 major sources, 107 synthetic minor sources and approximately 300 minor sources. MSCHD has a goal to inspect, at minimum, 90% of the sources (major and synthetic minor) every year. Minor sources are inspected every other year. During FY2005 and FY2006, nearly 100% of the major and synthetic minor sources were inspected, which exceeds EPA's inspection frequency requirements.

Each engineer in the Major Sources Branch is responsible for permitting, compliance, and enforcement for their assigned major and synthetic minor sources. The engineers conduct yearly inspections and complete a full compliance evaluation at their sources. Inspection reports are usually written within 30 days after the inspection and are reviewed by the enforcement manager. MSCHD does not have a written protocol for inspection procedures. However, MSCHD does periodically review EPA's protocol for inspections and upgrades their method of inspections accordingly. During inspections, the engineers generally follow the permit requirements.

The annual Title V compliance certifications and other reports received are reviewed upon receipt by the engineers. There have not been any non-compliance actions taken as a result of the annual compliance certifications during FY2005 and FY2006.

Each violation identified by an engineer is discussed immediately with the enforcement and technical manager, and the inspection report is due within 2 weeks for inspections where violations are discovered. Following management review and direction, a Notice of Inquiry (NOI) is sent to the company alerting them of possible violations. The NOI requests additional information of the company that may dispute the alleged violation(s), and requests a show cause meeting within 30 days of the identification of the violation. A show cause meeting with the company is held, and if the information still demonstrates that there is a violation, a Notice of Violation (NOV) listing the violations and a penalty is issued. The company is required to pay the penalty within a specified time period, and if MSCHD does not receive payment, the matter is turned over to the county attorney for collections. If a company wants to appeal the NOV, then the company can appeal to the local Air Pollution Control Board, if not settled then to the court system. For MSCHD's fiscal year from July 2006 to June 2007, the department issued 17 NOIs and 13 NOVs. If there is not a violation or enforcement discretion is used, MSCHD will send out warning letters or issues a warning in the inspection report. For MSCHD's fiscal year from July 2006 to June 2007, they issued four warning letters.

To identify sources operating without permits, MSCHD regularly monitors the newspapers and television stations for announcements and has identified a few sources operating without a permit from complaint calls. For example, two sources were identified as operating without a permit as a result of complaints submitted to MSCHD.

MSCHD has a dedicated engineer that is responsible for the stack testing program. MSCHD follows EPA guidance and policy for stack tests, and they have internal stack testing rules. Stack test frequencies are required by construction permits, new source performance standards for change of operation, prevention of significant deterioration issues, air toxics regulations, and occasionally by request from MSCHD. MSCHD does not perform any stack testing, but reviews the test protocol and test results. Close to 100% of all source testing is evaluated on-site.

EPA's policies and guidance for CEMs are followed. MSCHD does not perform audits of CEMs but reviews the company's data and witnesses the CEM audit, which is conducted by the dedicated source stack test engineer.

MSCHD is able to immediately enforce most new regulations. However, if the regulation must be adopted by the state of Tennessee first, then MSCHD has to adopt it after the state process is completed. However, for most new regulations, adoption is automatic and enforcement can take place immediately.

MSCHD does not have a Supplemental Environmental Project (SEP) policy but follows the EPA SEP policy. MSCHD offers SEPs as an option for settlements, and there have been two EPA global settlements with SEPs that have been coordinated with MSCHD.

Data and Reporting Requirements

MSCHD has a dedicated staff member that updates AFS on a routine basis and attends

annual AFS meetings to stay up-to-date on the latest requirements and developments. MSCHD works actively with Region 4 to resolve any data issues that may occur.

MSCHD has an internal tracking system that records all correspondence received and letters sent from the department. A status of each item is included in the system. A weekly report from both AFS and their internal tracking system are printed out and distributed to the engineers for review.

There are currently no procedures in place at MSCHD to communicate to EPA high priority violators within the time-frame specified in the CMS strategy. EPA's goal is to hold conference calls with the technical manager once a month, but there have been many months during FY2006 in which MSCHD has been unreachable for a conference call.

Compliance Assistance Activities

MSCHD provides compliance assistance through the following activities:

- Public meetings for permitting requirements.
- Visit schools and present information about MSCHD's organization including their tasks and responsibilities.
- MSCHD is currently creating an Air Quality Improvement Branch to assist in educating the public about what they do and about pollution.
- Attend Chamber of Commerce meetings for the industrial sector and give updates on new regulations and host a general question and answer session.
- Visit individual companies and consultants to provide assistance for regulations and emission calculations.

MSCHD does not have a specific pollution prevention (P2) program. P2 activities include talking to the public about not topping off gasoline, and conducting outreach for schools. MSCHD participated in a study sponsored by EPA Region 6. In the study investigators flew over sources and barges in the fall of 2006 with an infrared volatile organic compound camera and identified leaking sources. This resulted in coordination to reduce the VOC emissions from the discovered leaks.

Compliance/Enforcement Issues Identified

The only compliance/enforcement issue identified was the lack of procedures at MSCHD (e.g., monthly conference calls) to communicate to EPA high priority violators within the time-frame specified in the CMS strategy.

MSCHD CAA SRF Element-by-Element Description

1. Degree to which state program has completed the universe of planned inspections/evaluations (addressing core requirements and federal, state and regional priorities).

Findings:

FCEs at Title V major sources: The national goal in the CMS guidance is 100% FCE coverage at major sources over two years. EPA's guidance allows up to three years to conduct an FCE at a mega source (complex facilities like chemical plants or refineries). According to the data metrics, FCEs were performed at 97% of major sources in FY 2005-2006 (35 of 36 major sources). Under MSCHD's FY2005-2006 CAA Compliance Monitoring Strategy, MSCHD planned to conduct FCEs at each of their major sources with seven classed as mega sources over FY2005-2006. The dynamic nature of major source universes is the probable explanation for the FCE coverage not attaining 100%.

FCEs at SM sources: EPA's guidance allows state/local air agencies five years to perform FCEs at 100% of SM sources. The data metrics show FCEs being performed at 94% of SM sources over FY 2005-2006 (91 of 96 SM sources). The dynamic nature of sources shifting to/from major source status, source closures and new sources may account for the percentage to drop below 100%.

Title V Annual Compliance Certifications (ACCs) received and reviewed: EPA's CMS Guidance requires that 100% of Title V ACCs are to be reviewed annually. According to the data metrics, 100% of 25 Title V annual compliance certifications due in FY 2006 were received and reviewed by MSCHD.

Sources with "Unknown" Compliance Status Designations: The data metrics showed no sources with an "unknown" compliance status. An "unknown" compliance status is usually associated with a source going longer than two succeeding years without a FCE being recorded in AFS. The national goal is to minimize the number of sources with an "unknown" compliance status.

Citation of information used for this element:

- MSCHD's FY2005-2006 CMS Plan
- OECA SRF data metrics (source of data is AFS)
- EPA's CMS Guidance (dated April 2001)

Recommendation: None

2. Degree to which inspection reports and compliance reviews document inspection findings, including accurate description of what was observed to sufficiently identify violations.

Findings: Fifteen source files were reviewed to see how MSCHD documents a completed FCE. Ten of these source files were major sources. All elements of a FCE and compliance monitoring report (CMR) were examined: general and facility information about source; a description or listing of all applicable requirements for the source; an inventory and description of regulated units and processes; information on previous enforcement actions; compliance monitoring activities such as compliance assistance; reviews of all required reports such as Continuous Emission Monitoring System (CEMS) reports, malfunction reports, the Title V annual

compliance certification and semi-annual monitoring reports; assessments of control device and process operating conditions, process parameters and control equipment performance parameters; reviews of facility records, operating logs and visible emissions observations; reviews of stack test reports and findings/recommendations relayed to the source during the compliance evaluation (see EPA's April 25, 2001, CMS guidance for a description of these terms). There is no EPA guidance on how FCE elements are documented in state/local files.

MSCHD files contain documentation of the FCE elements. Inspection reports were found in all files reviewed and these reports contained many of the elements being investigated: facility information, a listing of applicable requirements, inventories of regulated units/processes and the results of the inspection. In some cases, they discussed results of source submitted reports, reviews of facility records and/or visible emission observations. Where reviews of required reports or records were not in the inspection report, they were found in separate documents in the files including a computer spreadsheet of incoming and outgoing actions. In half the files there was enforcement history information. Lack of enforcement history could mean that there has been no enforcement activity at that source. With respect to compliance assistance, EPA did not note any in the files reviewed but understand that each source is provided a copy of their inspection report which may contain recommendations for pollution prevention and compliance alternatives. In addition with the frequency that inspectors get on site, there are many opportunities to provide compliance assistance. No "FCE Checklist" was found that would monitor the elements of a FCE being accomplished, but there was no evidence of missing FCE elements. MSCHD might want to consider developing a FCE checklist for their files as an aid in ensuring that all FCE (and Compliance Monitoring Report) elements are completed (see EPA's CMS guidance for a description of these elements).

Citation of information used for this element:

- MSCHD's source files
- EPA's CMS guidance (dated April 25, 2001)

Recommendation: None

3. Degree to which inspection reports are completed in a timely manner, including timely identification of violations

Findings: Based on the 15 inspection reports found in the files, 12 reports (80%) were written within 60 days of the on site visit (the other three were written between 60 days and 120 days of inspection). MSCHD says they have a target of completing inspection reports within 2 weeks of the site visit. The department also shared they have a policy that upon discovery of a violation, inspectors are required to notify their supervisor, but are allowed up to 30 days for this notification. The timeliness of completing inspection reports in conjunction with internal policies ensures that HPVs that might be a result of an inspection get identified and addressed in a timely manner. There is no established EPA guidance requirement for the timeliness of inspection reports

Citation of information used for this element

- MSCHD source files
- Discussions with MSCHD management

Recommendation: None.

4. Degree to which HPVs are reported to EPA in a timely and accurate manner.

Findings: According to the data metrics, MSCHD's HPV discovery rate was 4% (1 HPV identified of 25 FCEs performed) based on FCE coverage at major sources in FY2006. The national average was 9.7%. Discovery rate means HPVs identified by the state in the fiscal year divided by the number of major sources with a state FCE performed in that fiscal year. In addition, the HPV discovery rate based on operating major sources in the same fiscal year was 1.9% (1 HPV identified of 53 major sources). The national average was 4.7%. Discovery rate in this case means HPVs identified by the state in the fiscal year divided by the number of operating major sources.

Regarding the lower than average HPV rates, MSCHD indicated that their sources stay relatively in compliance due to the yearly site visits at every major and SM source and an aggressive complaint/odor follow up policy. Thus there is less of an opportunity for discovery of HPVs. In addition, the periodic calls with EPA to oversee the identification, reporting into AFS and resolution of HPVs helps ensure that HPVs are not being missed. Management shared that they are briefed on all violations soon after an on site visit and identification of HPVs is a high priority.

Citation of information used for this element:

- OECA SRF data metrics

Recommendation: None

5. Degree to which state enforcement actions include required corrective or complying actions (injunctive relief) that will return facilities to compliance in a specific time frame.

Findings: Of the 15 MSCHD files reviewed, 7 contained NOVs, which resulted in compliance being achieved. In MSCHD, a Notice of Inquiry is issued to establish a violation. If a violation is established, a NOV is issued which usually has associated penalties. If a schedule is needed to return the source to compliance, a consent order is issued. Of the 7 NOVs in the files reviewed, 6 had penalties associated with the action. The one without a penalty was a multimedia case, and a penalty was collected under the RCRA program.

Citation of information used for this element

- MSCHD CAA source files

Recommendation: None

6. Degree to which a state takes timely and appropriate enforcement actions in accordance with policy related to specific media.

Findings: According to the data metrics, only one HPV had a day zero in FY2006 and it was addressed within 270 days. In the file review (which covered a broader timeframe than FY2006), three sources had a HPV. Two of the 3 were addressed in 270 days. The national goal is for all HPVs to be addressed within 270 days.

Citation of information used for this element:
- OECA SRF data metrics
- MSCHD Source files

Recommendation: None

7. Degree to which the State has a penalty policy that includes both gravity and economic benefit calculations.

Findings: MSCHD follows EPA's penalty policy for HPVs. The department follows their own penalty protocol for non HPVs and occasionally it is used for HPVs, depending on the nature of the violation. This protocol breaks violations into two divisions: those that harm or have the potential to harm the environment and/or human health and those that are related to documentation. Each of the two divisions addresses the gravity component of EPA's Penalty Policy. The protocol addresses the economic benefit gained through noncompliance. The protocol also outlines a process to determine the economic advantage gained by not complying including the use of EPA's BEN model.

Citation of information used for this element:
- MSCHD's Environmental Penalty Protocol (September 2004)

Recommendation: None

8. Degree to which state documents both gravity and economic benefit in accordance with any applicable penalty policy.

***Findings*:** Of the 7 state NOVs found in the files reviewed, all contained penalties. MSCHD does use penalty computation worksheets, including one for major sources (HPV) and one for minor sources (non HPV). In both worksheets the gravity and economic benefit components of the penalty are clearly shown. Five of the six files contained the penalty computation worksheet. The one file without a penalty worksheet was for failure to submit a permit application.

Citation of information used for this element:
- MSCHD source files
- MSCHD's Penalty Computation Worksheets

Recommendation: None.

9. Degree to which enforcement commitments in the PPA/PPG/categorical grants (written agreements to deliver a product/project at a specified time), if they exist, are met and any products or projects are completed.

Findings: MSCHD has an annual Air Planning Agreement (APA) with Region 4. It is funded through CAA §105 grant dollars principally and applies to non-major sources and asbestos demolition/renovation projects. Activities related to Title V sources (i.e., major sources) are funded through industry fees and thus are not eligible for grant dollars. With respect to the Monitoring and Enforcement component of the FY2006 APA, MSCHD committed to the following:

- Ensure that AFS contains accurate and timely data on the minimum data elements for synthetic minor sources by direct entry and comply with the direct access procedures or through batch updating process (computer uploading).
- Resolve violations of any rule for which EPA has delegated authority to the state for non-major MACT sources and synthetic minor sources.
- Utilize the pollution prevention database to enhance PP outreach activities during compliance inspections.
- Inspect 25% of all NESHAP asbestos demolition/renovation projects.
- Observe asbestos work practices in progress whenever possible to assess compliance.
- Since the ACTS/NARS database is no longer available MSCHD is to report the following asbestos NESHAPS activities at least 45 days after each fiscal quarter: (1) number of notifications received; (2) number of inspections; (3) non-notifier activity if applicable; (4) number of non-penalty enforcement actions; (5) number of enforcement actions with an assessed penalty and (6) total penalty assessment.
- Maintain a state health and safety plan for asbestos demolition/renovation inspectors.
- Recommend cases and provide support to the EPA Criminal Enforcement program.
- Implement the CAA section 112 (r) program. Develop a work plan including risk management program audits and facility inspections.

MSCHD has met these deliverables based upon the overview the region does on a semi-annual basis using the region's grant tracking system.

Citation of information used for this element:
- MSCHD's FY2006 APA
- Data from EPA Region 4's APA tracking system

Recommendation: None

10. Degree to which Minimum Data Requirements (MDRs) are timely (focus on integrity of HPV data).

Findings: MDRs represent the minimum amount of data that EPA believes nationally is necessary to oversee the national stationary source compliance monitoring and enforcement program. Examples of the 26 elements that comprise the MDRs are recording of FCEs, HPVs,

stack test results, compliance status and Title V annual compliance certification reviews. In examining the MDRs for the 15 files reviewed, no significant data deficiencies were noted.

One specific item that the SRF evaluation analyzes is the HPV MDRs. These MDRs require timely entry of HPV data into AFS. The data metrics report on the percent HPVs entered greater than 60 days after designation. The data metrics data show no HPVs entered more than 60 days following the date of discovery.

Citation of information used for this element

- EPA's minimum data requirements
- OECA SRF data metrics

Recommendation: None

11. Degree to which MDRs are accurate (focus on plant compliance status).

Findings: This metric analyzes sources carried as HPVs compared to their AFS plant compliance status. HPVs should be shown in AFS as in non-compliance until they are concluded. The data metrics shows three non-concluded HPVs being carried in AFS as in compliance.

With respect to stack test data, the data metrics show 2 of 15 stack tests performed in FY2006 without a pass/fail result coded into AFS. The two stack tests were under review at the time of the data metrics evaluation, and have since been coded "pass" into AFS.

Citation of information used for this element

- OECA SRF data metrics

Recommendation: MSCHD should investigate why some non concluded HPVs are carried in AFS as in compliance, and why stack test results are not getting coded in AFS and propose a plan that will ensure proper AFS entry.

MSCHD Response: Since the SRF evaluation, the stack test results are now coded into AFS.

12. Degree to which the minimum data requirements are complete, unless otherwise negotiated by the region and state or prescribed by a national initiative.

Findings: The goal of this metric was to ensure agreement between the state/local air agencies and the region on the completeness of the MDRs being reported into AFS and, where discrepancies exist, to develop an action plan for making appropriate corrections. Specific MDR elements examined included: Title V universe; source count of major, synthetic minor and NESHAP minor sources; universe of new source performance standard (NSPS), NESHAP and MACT sources; completeness of FCEs and partial compliance evaluations (PCEs) being reported; historical non-compliance counts; completeness of sources receiving NOVs; completeness of HPV reporting; completeness of enforcement actions being reported and

completeness of penalty dollars assessed by state. MSCHD was requested to comment on the adequacy of the data metric information being generated by AFS. No issues were uncovered.

Citation of information used for this element

- AFS data

Recommendation: None

Program: Clean Water Act - National Pollutant Discharge Elimination

Introduction

The Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program is administered by the Tennessee Department of Environment and Conservation (TDEC), Division of Water Pollution Control (WPC). TDEC has a central office located in Nashville, with eight field offices located throughout the state. The field offices are responsible for inspections, compliance and ambient monitoring, as well as certain enforcement functions. The field offices are located in Chattanooga, Columbia, Cookeville, Jackson, Johnson City, Knoxville, Memphis, and Nashville.

The Enforcement and Compliance Section of the Division of WPC, located in the Nashville central office, is responsible for all enforcement with assistance from the field offices, with the exception of enforcement involving mining facilities, which is held by the Mining Section.

The State of Tennessee identifies and addresses violations using EPA criteria outlined in program delegation documents, the EPA Region 4/TDEC NPDES Memorandum of Agreement (MOA), executed in 1993, and/or the Tennessee Enforcement Management System (EMS). Tennessee's implementation of the compliance program meets the required standard pursuant to the CWA and its implementing regulation at 40 CFR §123.26. Various types of inspections are conducted to independently assess the compliance status of a given facility with or without a NPDES permit, such as compliance evaluation inspections (CEI), compliance sampling inspections (CSI), and reconnaissance inspections (RI). Discharge Monitoring Reports (DMRs) submitted by permittees are reviewed to assess compliance status, and such information is entered by Tennessee into EPA's national Permit Compliance System (PCS) in accordance with the Water National Enforcement Database protocol and TDEC's annual CWA § 106 workplan. Tennessee uses enforcement actions to address environmental noncompliance to bring businesses, individuals and government entities into compliance with environmental laws and regulations. Tennessee utilizes both informal and formal enforcement actions to achieve compliance. Informal enforcement response would be the issuance of a Notice of Violation (NOV) or an Expedited Director's Order (for storm water). A formal enforcement response, by federal definition, would be the issuance of a Director's Order (DO), Commissioner's Order (CO) or an Agreed Order (AO). The Tennessee EMS describes and contains protocols for State enforcement response to noncompliance determined independently either through inspections, or

complaints or through the analysis of self reported noncompliance such as DMR submittals, noncompliance notice requirements of a NPDES permit, or under self disclosure /self audit policy.

A component of a SRF evaluation involves the file review of the compliance and enforcement program. The TDEC CWA on site file review was conducted on June 25-28, 2007. EPA utilized the SRF File Selection Protocol when selecting representative files for review. The review period for the Tennessee State Review Framework was designated to cover fiscal year 2006 (October 1, 2005 to September 30, 2006) and inspection year 2006 (July 1, 2004 to September 30, 2006, 15 month transitional inspection year). The file selection protocol dictates selecting twenty-five (25) to forty (40) facilities for file review for a universe of NPDES facilities exceeding 700. The protocol also requires diversification where possible, recommending approximately half of the files reviewed include some form of enforcement activity. Preliminary file selection was performed utilizing PCS data of inspections performed in inspection year 2006 (IY2006) and cases concluded in fiscal year 2006 (FY2006). Forty-six (46) facility files were randomly selected, with Tennessee's consent, and forty-four (44) were reviewed. One facility file could not be located during the on site review. Facility files were reviewed for twelve (12) NPDES majors, three (3) individual minors, five (5) Combined Animal Feeding Operations (CAFOs), nineteen (19) storm water and six (5) concrete facilities. Files were selected for review insuring the majority of the facilities had either inspection coverage during IY2006 or enforcement action issued during FY2006.

The file list was submitted to the TDEC in advance of the EPA on site visit. The facilities selected for review represented all eight field offices. TDEC had the files available for EPA review in hard copy format at the Nashville office. The facility files were well organized and typically contained inspection reports, penalty worksheets, penalty payment documentation, correspondence from the facility, Discharge Monitoring Reports (DMRs) and enforcement actions. In addition to the files reviewed, SRF data metrics were utilized to assist in the review of the compliance and enforcement program. EPA and TDEC agreed to utilize the data metrics from the May 12, 2007, data refresh date pulled from the SRF website, for the review.

CWA Element-by-Element Description

1. Degree to which state program has completed the universe of planned inspections/evaluations (addressing core requirements and federal, state, and regional priorities).

Findings: Tennessee conducts NPDES inspections in accordance with their annual CWA §106 Grant Workplan. The workplan incorporates an annual inspection plan that dictates the minimum percentage of facilities to be inspected and/or the minimum frequency of inspections. This flexibility provides Tennessee the opportunity to focus State resources in State priority areas. All of the compliance determinations are performed in the six district offices.

Twelve (12) major facilities were selected for review, consisting of eight (8) municipal majors and four (4) industrial majors. Thirteen (13) inspection reports for major facilities were reviewed. Types of major facility inspection reports reviewed included Compliance Evaluation

Inspections (CEI), Compliance Sampling Inspections (CSI), Reconnaissance Inspections (RI) and complaint inspections. Thirty-two (32) non-major facilities were reviewed with twenty-one (21) inspection files reviewed. Types of non-major facility inspection reports reviewed varied including CEIs, RIs, and CSIs.

According to the SRF data metrics, TDEC inspected 50.6% of all its major facilities during IY2006 twelve month period (July 1, 2005 to June 30, 2006). Although this percentage is below the national average of 61.1%, TDEC still exceeded their CWA §106 workplan commitment for inspections at a minimum of 50% of its majors (universe of 156 major facilities). In addition to the inspected majors, the state performed inspections at 15% of its non-major facilities over the traditional 12-month inspection year. The number of compliance monitoring inspections reported in PCS for the IY2006 12-month period was 434 for 370 facilities inspected.

As part of TDEC's CWA §106 workplan commitment, Tennessee is to develop an inspection plan annually that covers inspections at conventional, industrial, storm water, and CAFO facilities. The inspection plan was determined to be consistent with EPA guidance. Due to Tennessee's organizational structure (eight field office locations), field presence is maximized. By conducting frequent inspections of permitted facilities, TDEC is able to identify corrective action measures to be taken to address compliance problems. Tennessee's inspection activity suggests strong presence in the field implementing one of the key elements of the compliance program.

Citation of information reviewed for these criteria:

- CWA State Review Framework Data Metrics
- TDEC CWA §106 Program Workplan
- PCS Data Pull for IY2006 (12-month and 15-month inspection period)
- On site files

***Recommendations*:** None

2. Degree to which inspection reports and compliance reviews document inspection findings, including accurate description of what was observed to sufficiently identify violations.

Findings: The CEI reports reviewed were comprehensive in addressing permit requirements. Wastewater compliance inspection reports are standardized in identifying areas evaluated and the compliance determination of each area. Use of standardized inspection reports provide for a level of consistency in areas reviewed and helps assure thorough inspections are performed. Areas evaluated during the inspection included permit, records review, facility site review, effluent/receiving stream, operations and maintenance, flow measurement, self monitoring program, laboratory, sludge handling, and pollution prevention. The quality of inspection reports varied from well documented inspection findings with supporting photographic evidence to very brief with little to no description. Specific areas observed, condition of the facility, specific records reviewed, etc. could not clearly be determined if the inspection report cover sheet was not accompanied with a detailed narrative and/or photos.

One of the wastewater inspection reports reviewed generated formal enforcement actions. Noncompliance/deficiencies were most often addressed via use of notice of violations, requiring the facility to respond to the inspection report findings by identifying corrective actions taken.

Citation of information reviewed for these criteria:

- On site files
- PCS inspection information for IY2006
- NPDES Inspection Manual

***Recommendations*:** It is recommended that TDEC supplement or enhance the current inspection checklist to specify areas evaluated during the inspection such as site specific records reviewed (permit, DMRs, lab sheets, SWPPP, etc.) and physical areas evaluated (i.e. outfalls, effluent/receiving stream, lab, pretreatment, and sludge). These areas could not clearly be determined in many of the inspection reports reviewed.

TDEC Response: The Water Pollution Control Division will be developing a state-wide format for an inspection checklist, in order to make the reporting of inspection data more uniform.

3. Degree to which inspection reports are completed in a timely manner, including timely identification of violations.

Findings: Ninety-seven percent (33 out of 34 inspection reports reviewed) of inspections reports reviewed were completed and delivered/forwarded to the permittee in a timely manner, within thirty days from the date of the inspection. TDEC does not have guidance for writing or issuing inspection reports. The state related that that the reason that the inspection report was issued beyond 30 days was likely due to inspector workload. The majority of facility documents reviewed were inspection reports, correspondence related to the inspections, DMRs, and violation notices generated as a result of inspection or from the review of DMRs. The violations appeared to be identified and responded to by the facility in a timely manner. Tennessee should continue the positive trend in responding to violations discovered during an inspection in a timely manner.

***Citation of information reviewed for these criteria*:**

- PCS data pull for IY2006/FY2006
- On site files
- Water Pollution EMS (September 2002)

***Recommendations*:** None

4. Degree to which significant violations are reported to EPA in a timely and accurate manner.

Findings: Tennessee uses the federal NPDES definition of significant noncompliance (SNC). TDEC identifies and strives to address violations using the EPA criteria outlined in program delegation documents and the MOA. TDEC submits Quarterly Non-Compliance Reports

(QNCRs) and generally addresses QNCR reported SNC violations in a timely and appropriate manner. The wastewater program operates under a current EMS (dated September 2002), that describes how and when Tennessee will take action on violations. Use of the EMS is intended to recommend enforcement responses that are timely and appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance. In addition to the QNCR, TDEC and Region 4 utilize the national Watch List system to address facilities with longstanding violations without recent formal enforcement action. The Watch List has been a useful tool since its implementation in 2004, in assisting both the Region and State in reviewing and tracking facilities with serious or chronic violations, without recent formal enforcement response.

The current EMS does not address changes in the rules/regulations such as those dealing with storm water, MS4, and CAFOs, and changes in SNC definitions.

TDEC enters major facilities' effluent data into PCS in a timely manner (see Element 10). TDEC is required to maintain a DMR and parameter data entry rate for majors at or above 95% per the PCS policy statement, the annual CWA § 106 workplan commitment, and MOA. During the second quarter of FY2006, TDEC data entry rate for majors averaged an impressive 99.5% that exceeded the national average of 92.4%. A high data entry rate helps ensure accurate SNC identification information and other compliance information, which can be publicly accessed using OECA's Enforcement and Compliance History Online (ECHO) database.

PCS automatically identifies and designates SNC based upon compliance schedules contained either in permits or enforcement actions, effluent violations contained in DMRs, and other violations such as single event violations (SEVs). SEVs are discretionary for the state with respect to their designations and entry into PCS as significant noncompliance. TDEC has not entered any SEVs into PCS. The percent of Tennessee's majors in SNC for FY2006 is 21.8% compared to the national average of 19.4%.

Citation of information reviewed for these criteria:

- EPA/TDEC NPDES MOA (1993)
- OECA CWA SRF Data Metrics
- TDEC CWA §106 Program Workplan
- Water Pollution EMS (September 2002)
- On site files
- PCS Policy Statement

***Recommendations*:** It is recommended that Tennessee identify and track SEVs in PCS. EPA has recently clarified its expectations for reporting SEV, and future reviews of this element will include assessment of the states' performance against the revised expectations. TDEC should review and update its EMS and submit the EMS to EPA in accordance with the CWA §106 workplan. The enforcement escalation requirement, in addition to the circumstances mentioned in the EMS, should allow for facilities that would become SNC or are in SNC to be fast tracked to a formal enforcement action instead of the current process where NOV is issued followed then by formal enforcement action consideration.

TDEC Response: TDEC has proposed a state-wide inspection checklist that will include a clarification of SEV codes and will be designed to promote the identification and reporting of SEVs. TDEC will consider reviewing the EMS and if it is determined that it requires modification or updating, EPA will be provided with dates of the expected changes and their implementation, along with a copy of the modified EMS.

5. Degree to which state enforcement actions require complying action that will return facilities to compliance in a specific time frame.

Findings: TDEC addresses noncompliance through informal and formal enforcement responses. Informal enforcement response would be the issuance of a NOV or an expedited Director's Order for storm water construction (penalty only with no corrective action requirement). Although these responses are considered informal, they are generally effective in the timely return of the facility to compliance. Formal enforcement response requires Director level approval that may assess civil penalties and damages, and require corrective action and compensatory mitigation. Formal enforcement can either be pursued utilizing a Director's Order (DO), Commissioner's Order (CO) or an Agreed Order (AO). The DO is a Water Pollution Control Division Order which allows for swift and efficient enforcement. The CO is a TDEC order that is routed through the Tennessee Office of the General Counsel (OGC). The CO is utilized for circumstances where extensive corrective action is necessary and/or when there is a significant penalty (greater than $100k). The AO is pursued if the DO or CO is appealed.

TDEC utilizes a one page expedited administrative order that field staff can issue in the field during construction site inspections. The expedited orders are in a checklist format and are issued in cases where there is no environmental harm or sediment discharge from the site. The expedited orders have been effective in immediately addressing violations determined at the time of the inspection, overall achieving return to compliance more swiftly.

Eighteen (18) formal enforcement actions were reviewed which indicated that TDEC is implementing the above described process in such a manner that the state enforcement actions requiring complying actions return facilities to compliance in a reasonable and specific time frame. When injunctive relief or corrective action was required the files contained a reasonable compliance schedule of required actions and/or activities, designed to return the source to compliance.

Eleven (11) storm water industrial facility files were reviewed. Ten (10) of the files had expedited Agreed Orders in the file, and the last facility file missing the expedited Order. Three (3) of the expedited Agreed Orders were later rescinded due to the facilities' ability to demonstrate compliance. All of the expedited Agreed Orders were equivalent, and had an associated assessed penalty amount of $2500. The facilities were given the option to pay a reduced penalty amount of $1250 if the facility had returned to compliance and signed an agreement to waive their right to appeal. Approximately 71% (5 out of 7) of the storm water industrial expedited Agreed Orders included the reduced penalty option, but there was no documentation in the file that either the facility had returned to compliance, or that the facility signed the waiver. Compliance with the expedited Agreed Orders could not be verified.

Citation of information reviewed for these criteria:

- PCS data pull for FY2006
- OECA CWA SRF Data Metrics
- On site files
- Water Pollution EMS (September 2002)
- TDEC Memorandum: Expedited Enforcement Order Procedures (April 2006)

Recommendation: Review of a facility's enforcement and compliance files should allow for an independent assessment and verification of the compliance status. All documentation related to the facility compliance status determination, enforcement for noncompliance discovered, and subsequent return to compliance should be maintained in the facility enforcement and compliance files.

TDEC Response: Since the SRF evaluation, TDEC has clarified that the compliance condition of the waiver contained in the Orders would apply as long as no additional incidents of non-compliance were documented within the 12 months following issuance of the Order. The absence of an additional NOV in the enforcement file following the issuance of the Order indicates that a facility was not cited for additional violations pertaining to those addressed by the Order, and therefore had complied with the condition of the waiver and the Order. The signed copies of the waivers were retained by the department's Consolidated Fees Section, who actually received the waivers and payments. Copies of the waivers should have been included in the enforcement files, and will be in the future.

6. Degree to which the state takes enforcement actions, in accordance with national enforcement response policies relating to specific media, in a timely and appropriate manner.

Findings: TDEC strives to identify and address all violations using the EPA criteria outlined in program authorization documents and the MOA. EPA's QNCR Guidance Manual establishes that the number of facilities without timely action does not exceed 2% of active major universe throughout the fiscal year. In the OECA CWA Data Metrics Tennessee is reported at 9.6%, which is above the 2% threshold for SNC facilities beyond enforcement timelines milestones, and above the national average of 8.3%. From information provided by TDEC, it takes approximately eight months for Tennessee to process a formal enforcement action (DO and CO) from the date of the NOV. Eighty-six percent (6 out of 7) of the enforcement actions issued at major facilities were not timely (beyond 180 days from the date the facility was determined to be out of compliance). Many of the formal enforcement actions were taken after the issuance of numerous NOVs. In one case, 14 NOVs were issued prior to TDEC taking formal enforcement. Appropriate enforcement response returns the violator to compliance as expeditiously as possible, promotes deterrence and is equitable.

The EMS does not state the factors that should determine the implementation of a particular enforcement response, such as:

- the magnitude and duration of the violation,

- the impact of the violation on the environment and public health, and
- the compliance history and good faith of the facility.

Citation of information reviewed for these criteria:

- OECA CWA SRF Data Metrics
- On site files
- Water Pollution EMS (September 2002)
- EPA/TDEC NPDES MOA
- PCS data pull for FY2006

Recommendations: Enforcement response should be issued timely and appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance. Timely response to noncompliance is critical for an expeditious return to compliance by a violator. Formal enforcement action should be pursued when informal enforcement has not been successful in returning a facility back to compliance and/or when a formal enforcement action is more appropriate. Likewise, further escalation of formal enforcement should be considered in a timely manner when existing formal enforcement action did not achieve expeditious compliance. Tennessee should evaluate its enforcement response policies to determine ways to ensure that the state enforcement action response is timely, striving to maintain the less than two percent national goal for major facilities without timely action. If necessary, the EMS should be amended to incorporate processes that address identified areas of improvement.

TDEC Response: TDEC clarified that during the time period addressed by the SRF evaluation, TDEC's WPC Enforcement and Compliance Section experienced a 50 percent loss of technical staff that was engaged in the drafting and issuance of formal enforcement actions, as well as the loss of the Section's Manager and Assistant Manager. This significant reduction in manpower was primarily responsible for the reduction in timely issuance of enforcement actions. The majority of those vacated positions have since been filled, and a marked improvement in timely issuance has resulted. If it is determined that an EMS revision is necessary, the recommendation will be considered during the review process.

Considering issuance of first (any) NOV as a trigger for counting days required to issue an order does not reflect TDEC business process, conditions at the facility, etc. A significant amount of time during the EPA evaluation was spent in explaining many scenarios for which such metric would be misleading and inadequate.

7. Degree to which the State includes both gravity and economic benefit calculations for all penalties.

Findings: TDEC has a written penalty policy, which is described in the WPC Enforcement Manual and further supplemented through memorandums such as the "Expedited Enforcement Order Procedures." Economic benefit is required to be considered when assessing penalties either by using EPA's model for calculating economic benefit (known as BEN), or other equivalent means. If it is determined that the economic benefit is not significant and does not need to be included in the enforcement action, this determination should be documented. The

penalty assessment process considers:

- Penalty as a deterrent;
- Damages;
- Cause, negligent or repetitive;
- Severity of a discharge on receiving water quality;
- Attempts by the violator to cease the violation;
- Economic benefit value of receiving waters; and,
- Feasibility of reducing or eliminating the discharge.

During the file review, it was observed that penalty assessment calculations did not specifically consider economic benefit as a factor. This observation was brought to the attention of the TDEC management and will now be included as a line item for all penalty assessment calculations. Based on the SRF data metrics, 95.5% (84 out of 88) of the formal enforcement actions reported in PCS in FY2006 had a penalty associated with it, totaling an assessed amount of $916,250. However, there were no collected penalties reported in PCS. The Water Pollution EMS does not address changes that TDEC has adopted, including penalty limit increase in the Director's Order and the expedited Director's Orders.

Although consideration of economic benefit as a component of the penalty assessment in storm water enforcement is included as one of the adjustment factors, it could not be clearly determined during the file review.

Citation of information reviewed for these criteria:

- CWA SRF Data Metrics
- Water Pollution EMS (September 2002)
- On site files
- TDEC CWA §106 Program Workplan
- BEN Model

Recommendations: An independent assessment of economic benefit or potential economic benefit derived from noncompliance should always be performed and documented. Every reasonable effort must be made to calculate and recover economic benefit and gravity in enforcement penalties. If such assessment is not feasible or is not applicable, a notation in the file should be made with an explanation. If exceptions to the calculated penalties are made, then a detailed explanation should follow documenting the cause for such deviations (e.g. waiving penalties, inability to pay evaluation, etc.). All supporting documentation demonstrating penalty derivation, specifically addressing gravity and economic benefit, should be retained and made available for review by EPA. EPA Region 4 can provide guidance on determining the cost for various storm water controls used in determining the economic benefit for storm water violations. The EMS should be amended to incorporate processes that are recommended by the CWA SRF evaluation, as well as policy updates.

TDEC Response: TDEC has put in place procedures that require all enforcement programs to conduct an economic benefit review for all enforcement cases. Enforcement files will clearly document that economic benefit was considered. If an economic benefit penalty was included in the penalty, the file will show how it was calculated, and if not included in the penalty, the file

will state the reason for not including an economic benefit component If it is determined that an EMS revision is necessary, processes addressing the inclusion of economic benefit assessments will be included.

8. Degree to which final enforcement actions (settlements or judicial results) take appropriate action to collect economic benefit and gravity portions of a penalty, in accordance with penalty policy considerations.

Findings: The SRF Data Metrics indicate that during FY2006, 95.5% of formal enforcement actions had a penalty associated with it. TDEC does not enter penalty collected information into PCS (see Elements 9, 10 and 12). Consideration of economic benefit as a component of the penalty assessed and collected was not clear and could not be determined from the file review.

It was observed that after a penalty was assessed, Tennessee oftentimes designated a significant portion of the penalty as "contingent" and due if there is not timely compliance with the specified corrective action. During the file review, it was noted that Tennessee designated up to 90% of a facility's assessed penalty (e.g., $8,000 upfront payment of a $78,000 assessed civil penalty) as contingent for a major municipal facility. TDEC related that some penalties were reduced because of a facility's inability to pay the assessed penalty. There was not any documentation the files supporting inability to pay determinations. Of the formal enforcement actions reviewed that had associated penalties, payment acknowledgement documentation (i.e. closure letter, copy of check/payment) was not consistently found in the files reviewed. It was explained that the TDEC, Department of Fiscal Services, Consolidated Fee Section (CFS) tracks and maintains information related to penalties collected and penalty payment acknowledgement. There are plans to link the Division of WPC database with the CFS database in order to view real time penalty payment information. Documentation or tracking records of penalties collected (payment acknowledgement letter, copy of payment checks, database reports, etc.) should be consistently maintained and available for review upon request.

Citation of information reviewed for these criteria:

- On site files
- CWA SRF Data Metrics
- TDEC CWA §106 Program Workplan

***Recommendations*:** It is recommended that TDEC pursue collection of assessed penalties to promote compliance by deterring future violations. Penalty reduction due to a facility's claim of inability to pay should only be considered upon review of appropriate supporting financial documentation submitted by the facility. All documentation supporting the mitigation of an assessed penalty, in addition to inability to pay, should be retained in the facility file. EPA Region 4 can provide guidance and instruction on how ability to pay issues are addressed and determined. TDEC should continue promoting the use of Supplemental Environmental Projects as an option to mitigate assessed penalty amounts.

TDEC should ensure penalty assessment and collection information is properly and timely encoded into PCS as required pursuant to the CWA§106 workplan (see Element 9). Also see recommendations for Element 7, which include the consideration of economic benefit and

gravity in the penalty calculations.

TDEC Response: Since the SRF evaluation, TDEC has reduced the incidence of non-contingent penalty reduction with regard to Agreed Orders, which are the types of Orders which allow for such reductions. WPC will develop a process to document the rationale for reductions that are allowed in the future. The high rate of personnel transition referenced in the response to Item 6 is the primary reason that penalty assessment and collection information was not properly and timely encoded into PCS. WPC had inadequate personnel and resources to meet that requirement. WPC is currently attempting to increase personnel and resources to correct that deficiency.

9. Enforcement commitments in the PPA/PPG/categorical grants (written agreements to deliver product/project at a specified time), if they exist, are met and any products or projects are complete.

Findings: Tennessee met or exceeded most requirements of their NPDES compliance and enforcement FY2006 CWA §106 workplan with the exception of data management requirements. This includes the following:

- the entering and maintaining of data in PCS for all formal enforcement actions,
- including penalty data (assessed and collected amounts and date of collection),
- entering inspection data for all NPDES program areas,
- entering formal enforcement data within 30 days of issuance of the action,
- entering and tracking designated SEV into PCS.

In addition, TDEC has not entered SEV data into PCS. The file review discovered three informal and one formal enforcement actions that were not entered into PCS. Three inspection reports were found not to be entered into PCS. No storm water construction inspection or enforcement information has been entered into PCS. It is noted that in the TDEC CWA §106 workplan that for storm water, TDEC is to submit a report containing the number of dischargers inspected, the number and type of formal action taken, and the number of permittees.

Citation of Information Reviewed for these Criteria:

- TDEC CWA §106 Program Workplan
- On site Files

***Recommendations*:** TDEC should ensure that all negotiated grant workplan commitments are met. Anticipated concerns that may impact meeting workplan commitments (i.e. limited resources) should be discussed during the workplan development phase. EPA should be notified as soon as the state is made aware, of any unanticipated concerns or the inability to meet established workplan commitments in order to discuss options and expectations.

TDEC Response: TDEC concurs with this recommendation.

10. Degree to which the Minimum Data Requirements are timely.

Findings: Tennessee uses customized Oracle database to track sites, permits, limitations,

compliance history, contacts, inspections, enforcement requests, orders, assessments etc. PCS data is only a small percentage of information tracked in order to properly manage state's NPDES program. TDEC enters most PCS minimum data requirements in a timely manner (i.e. effluent limits and monitoring requirements for all major facilities, DMR data entry, enforcement actions, compliance schedules, etc.) as specified in the Tennessee CWA §106 workplan (see Element 9). The state also maintains an electronic discharge monitoring report (eDMR) system, called DEEMERs, which feeds data into PCS through an automatic interface. Tennessee is currently in the process of implementing an enforcement and compliance comprehensive database. When fully brought on line, the database will have real time facility information available including permits, inspections, enforcement actions, compliance history, etc. as well as useful management tools such as staff workload allocation, staff case assignments, trending data, identification of any "bottle-necks," etc. TDEC expects that the timeliness of enforcement response should improve upon full implementation of the database which is expected by the end of FY2007.

TDEC identifies violations in a timely manner (see Element 4). TDEC is required to maintain a DMR and parameter data entry rate for majors at or above 95% per the PCS policy statement, the annual CWA § 106 workplan commitment, and EPA/TDEC NPDES MOA. During the second quarter of FY2006, TDEC data entry rate for majors averaged an impressive 98.9% which exceeded the national average of 92.4%. SRF metrics data reports that the TDEC DMR entry for non-majors is 96%.

Per the CWA §106 workplan reporting schedule, additional minimum data requiring PCS data entry include all formal and informal enforcement actions (enter within 30 days of issuance), assessed and collected penalty amounts (enter within 30 days of issuance), and inspection data (enter within 15 days of completion of inspection report, but no later than 90 days from the date of the inspection). The file review discovered that penalty information, formal and informal enforcement actions and inspection documentation were found to be in the facility file but not entered into PCS consistently (see Element 9).

Citation of Information Reviewed for these Criteria:

- On site files
- TDEC CWA §106 Program Workplan
- CWA SRF Data Metrics
- EPA/TDEC NPDES MOA
- PCS Policy Statement

***Recommendations*:** Tennessee should enter all required minimum data in PCS in a timely manner for inspections, enforcement action, permit limits, penalty information and/or DMR data per the negotiated CWA §106 workplan reporting schedule.

TDEC Response: TDEC concurs with this recommendation.

11. Degree to which the Minimum Data Requirements are accurate.

Findings: The SRF data metrics (dated May 12, 2007) noted major facilities having correctly coded limits for Tennessee at 91%, slightly above the national average of 90%, yet still below the national goal of at or above 95%. A sample of DMRs were spot checked during the on site file review and compared to the values reported into PCS. Every parameter measurement reported on the DMRs reviewed matched with the measurements entered and recorded in PCS.

The reliability usefulness of PCS is only as good as the data that supports the database. Data must be entered timely and accurately to ensure current information is available to determine compliance status. The file review discovered informal and formal enforcement actions as well as inspection reports that were not entered into PCS (see Element 9 and 10). This is both a data accuracy and completeness concern.

Citation of Information Reviewed for these Criteria:

- On site files
- OECA CWA SRF Data Metrics
- TDEC CWA §106 Program Workplan
- PCS Data Pull for IY2006/FY2006

Recommendations: TDEC should strive to achieve the national goal of 95% for data quality with respect to DMR and parameter measurement coding into PCS. Data entry procedures should be developed that account for regular QA/QC of data entered into PCS.

TDEC Response: TDEC concurs with this recommendation.

12. Degree to which the Minimum Data Requirements are complete, unless otherwise negotiated by the Region and State or prescribed by a national initiative.

Findings: During the file review, the following information was missing in PCS:

- three informal and one formal enforcement actions were found to be in the facility file but not accounted for in PCS;
- three inspection reports were found not to be entered into PCS;
- no storm water construction inspection or enforcement information was found in PCS;
- no SEVs were reported in PCS.

Although TDEC was able to maintain a DMR and parameter entry rate for majors at an impressive 99.5%, data completeness is a concern. For FY2006, PCS reports 88 formal actions were issued while the State provided data stating that 206 formal actions were issued. Total penalties assessed reported in PCS for FY2006 was $916,250 compared to $3,178,741 in penalties in information that TDEC provided (total calculated penalty including contingents). These discrepancies in data indicate that not all required data is being accurately reported into PCS. EPA recognizes that construction permits are not required to be entered into PCS. However, if such data is already in PCS, corresponding inspection and enforcement information should be entered, as well.

Citation of information reviewed for these criteria:

- On site files
- CWA SRF Data Metrics
- TDEC CWA §106 Program Workplan
- PCS Data Pull for IY2006/FY2006
- Enforcement data provided by TDEC

Recommendations: EPA recommends that TDEC institute procedures that assure that all information that should be entered into PCS is routed to data entry staff. Periodic data pulls should be performed from the state database and PCS for all minimum data required reconciling any differences found.

TDEC Response: Since EPA does not require construction permits to be entered in the PCS, corresponding inspections can not be entered either. TDEC is willing to share such information with EPA in printed or electronic format. Until batch upload processes are defined and available, TDEC we cannot commit to entering this data manually.

PROGRAM: Resource Conservation & Recovery Act - Hazardous Waste program

Introduction

On February 5, 1985, the State of Tennessee received final authorization to administer a state hazardous waste management program in lieu of the federal hazardous waste management program, established under Subtitle C of the Resource Conservation & Recovery Act (RCRA), 42 U.S.C. §§ 6921-6939(b) and codified in 40 C.F.R. Parts 124, 260-265, and 270. The RCRA compliance and enforcement program is administered by the TDEC central office in Nashville, along with eight field offices.

Tennessee currently has the following number of facilities in the RCRA regulated universe (data source: SRF Data Metrics; RCRAInfo database):

- 24 Operating Treatment, Storage, and/or Disposal Facilities (TSDFs);
- 556 Large Quantity Generators (LQGs) of hazardous waste;
- 728 Small Quantity Generators (SQGs) of hazardous waste.

The review period covered by this report was the last full fiscal year, which was FY2006 (October 1, 2005 - September 30, 2006). To initiate the SRF process, a conference call was held between EPA Region 4 and TDEC on May 8, 2007. Discussions were held with TDEC on the most effective process to conduct the file reviews (for each media), given the fact that TDEC has eight field offices. Because all enforcement actions are handled in the central offices in Nashville, it was agreed that the most practical approach would be to review the files there. The RCRA SRF file review was conducted during June 18-21, 2007.

The files were selected for the TDEC review using the OECA State Framework file selection protocol. The protocol indicates that the number of files to be reviewed should be based upon the selected universe of files. For the RCRA SRF review, the universe of files is the number of facilities that received an inspection during the fiscal year subject State Review Framework, and/or were subject to formal enforcement during that time frame. In FY2006, TDEC conducted RCRA compliance monitoring inspections at approximately 373 facilities and issued 26 consent orders (source: TDEC FY2006 RCRA End-of-Year Report). In the OECA SRF protocol, this translates to a range of 25 to 40 files to be reviewed, where 50% are enforcement files and 50% are inspection files. EPA selected a total of 16 enforcement files and 16 inspection files, for a total of 32 files to be reviewed. Specific files were selected from all eight TDEC field offices and across RCRA facility universes (TSDFs, LQGs, etc.). All files were reviewed the Central Office in Nashville, Tennessee, where the RCRA files were maintained.

RCRA Element-by-Element Description

The following section includes a description of each element of the State Review Framework, including corresponding data review metrics.

Element 1 - Degree to which state program has completed the universe of planned inspections (addressing core requirements and federal, state, and regional priorities).

Findings: The purpose of this element is to determine if the state met the inspection requirement for RCRA regulated facilities that are statutorily mandated or otherwise required in the OECA National Program Managers (NPM) Guidance.

- **Metric 1A - Inspection coverage at operating Treatment, Storage, and Disposal Facilities (TSDFs)**: The Solid Waste Disposal Act §3007(e) requires that every operating TSDF be inspected once every two years. The SRF Metrics indicate that TDEC inspected 95% (23 of 24) of the operating TSDFs in their state in the two-year time period from FY2005 to FY2006, which does not meets the statutory requirement for inspection coverage. The TSDF was not inspected since it is no longer an operating TSDF. TDEC is taking action to change the legal status code of this facility in RCRAInfo.

- **Inspection coverage at Federal Facility TSDFs:** The Solid Waste Disposal Act §3007(c) requires that every TSDF owned or operated by the federal government must be inspected every year to determine compliance with the hazardous waste regulations. There are eight operating federal TSDFs located in Tennessee, and in FY2006 all eight facilities received a compliance inspection as required by federal statute.

- **Inspections at State & Local TSDFs**: The Solid Waste Disposal Act §3007(d) requires that every TSDF owned or operated by a state or local government must be inspected every year to determine compliance with the hazardous waste regulations. Tennessee does not have any operating state-owned TSDFs.

- **Metric 1B and 1C- Inspection coverage at LQGs:** The OECA FY2006 National Program Manger's Guidance specifies that 20% of the active LQG universe should be inspected every year, with a goal of achieving 100% inspection coverage every five years. The OECA SRF Data metrics indicate that in FY2006 TDEC inspected 24.3% of the active LQG universe. During the five years from FY2002-FY2006, TDEC inspected 65.6% of the LQG universe. Metric 1B (one-year) is above the OECA guidance requirements for LQG inspection coverage. Metrics 1C (five-year) is below the OECA guidance requirements for LQG inspection coverage.

- **Metric 1D - Five-year inspection coverage for active SQGs:** Although the FY2006 OECA Guidance does not specify further inspection coverage requirements, it does recommend that the regions and states determine appropriate levels of inspection coverage for Small Quantity Generators (SQGs). Currently, Tennessee has more than 728 SQGs, and according to the OECA SRF Metrics, TDEC inspected an average of 56% of all SQGs over a five-year period (FY2002-FY2006).

The TDEC RCRA program met statutory and OECA Guidance requirements for inspections, with the exception of the five-year requirement for LQG inspection coverage. Due to the incorrect status of one TSDF in RCRAInfo, the SRF data metrics indicate that Tennessee missed this inspection requirement, while in fact all operating TSDFs were inspected over the two-year period from FY2005-FY2006.

Citation of information reviewed for these criteria:

- The Solid Waste Disposal Act
- OECA FY2006 National Program Manger's Guidance
- TDEC FY2006 RCRA End-of-Year Report
- OECA RCRA SRF Data Metrics
- RCRAInfo Data

Recommendations: The data metrics (which is drawn from RCRAInfo) showed one operating TSD as not being inspected during FY2005-2006, which is required by statute. According to TDEC, this facility is no longer operating as a TSD. It is recommended that TDEC update the TSD status in RCRAInfo to current facility operating status.

Additionally, the SRF data metrics indicate that TDEC did not inspect 100% of their LQG universe during five-year period from FY2002-FY2006. Further review shows that the LQG universe in the TDEC FY2006 grant workplan (395 LQGs) does not match the LQG universe in the OECA SRF data metrics (556 LQGs). The difference in the universe could be due to the conversion to RCRAInfo Version 3 that took place during the summer of 2006. After the conversion, OECA began using a new flag in RCRAInfo for "active LQGs" to determine the LQG universe subject to inspection (in addition to any LQGs that reported in the RCRA Biennial Reporting System). This new method of pulling the LQG universe could pull in facilities that had not reported into the RCRA Biennial Reporting System, but are still being showed as active in RCRAInfo. It is recommended that (1) TDEC clean up RCRAInfo data and identify the accurate LQG universe, and (2) TDEC track the LQG five-year inspection commitment in their grand workplan. The state has historically committed to the annual 20% inspection coverage at LQGs, but had not included the five-year LQG inspection commitment in the grant workplan.

TDEC Response: TDEC will incorporate the five-year goal into the workplan and strive to achieve 100% coverage in the future.

Element 2 - Degree to which inspection reports and compliance reviews document inspection findings, including accurate description of what was observed to sufficiently identify violations.

Findings: TDEC RCRA inspectors produce high quality inspection reports. The inspection reports are well documented with description of the facility, and/or supporting information (annual report, copies of manifests, etc). The inspection narratives were thorough in describing facility processes and waste management activities and all inspections review were logged into RCRAInfo. However, only three (19%) of inspection reports included photographs documenting inspection findings.

TDEC does an excellent job of documenting RCRA inspections, but need to include the use of photographs in the documentation of findings during inspections.

***Citation of information reviewed for these criteria*:**

- TDEC RCRA files
- RCRAInfo data

***Recommendations*:** It is recommended that TDEC establish the practice of incorporating photo documentation in the RCRA inspection reports.

TDEC Response: The field office inspectors have been instructed to incorporate the photo documentation in the RCRA inspection reports and the enforcement policy will be changed to incorporate the requirement.

Element 3 - Degree to which inspection reports are completed in a timely manner, including timely identification of violations.

Findings: The OECA RCRA Subtitle C Program Guidance and File Review Metrics (dated June 24, 2005) indicate that inspection reports should be completed within 50 days, or other timeframes negotiated between the Region and the state. There is no agreed timeframe for the completion of inspection reports in the current RCRA MOA between the TDEC and EPA Region 4 (effective January 21, 2005). Of the TDEC files reviewed, the inspection reports were completed within the following timeframes:

- Twelve (75 %) were completed within 50 days from the date of the inspection;
- Four (25 %) were completed between 51 and 100 days from the date of the inspection;
- No reports were completed greater than 100 days from the date of the inspection.

There did not appear to be a consistent explanation for the inspection reports that exceeded 50 days (i.e., sampling required, more information requested, etc.) or a pattern of late

reports with any particular field office. Some of the late reports involved complex facilities that required longer inspections and long inspection reports.

***Citation of information reviewed for these criteria*:**

- OECA RCRA Subtitle C Program Guidance and File Review Metrics (dated June 21, 2007);
- TDEC RCRA Inspection reports
- EPA/TDEC RCRA MOA (effective January 21, 2005).

***Recommendations*:** It is recommended that TDEC establish and implement an internal alert mechanism to identify when inspection reports are approaching 50-day time limit.

TDEC Response: A new enforcement tracking system is being developed by TDEC that will allow tracking of important time-frames. Each field office has been instructed to track the inspection report times until the new system is put into place.

Element 4 - Degree to which significant violations and supporting information are accurately identified and reported to EPA national databases in a timely manner.

Findings: According to OECA SRF Data Metrics, in FY2006 TDEC had a Significant Noncompliance (SNC) identification rate of 10%, which is approximately 3 times the national average. A total of forty-one new SNCs were identified during FY2006.

Field Offices conduct inspections and identify Secondary Violator or potential SNC facilities for formal enforcement action. Field offices submit an Enforcement Action Requests (EAR) to the TDEC Central Office to be evaluated for enforcement. The possible explanation of the high rate of SNC identification is that most of the EARs submitted to TDEC Central Office are identify as potential SNC facilities in RCRAInfo. Then, after TDEC's enforcement process is completed the facility might received an enforcement action ranging from a Warning Letter to a Director's Order or Commissioner's Order.

Citation of information reviewed for these criteria:

- TDEC inspection files
- OECA SRF Data Metrics
- RCRAInfo Data
- Hazardous Waste Civil Enforcement Response Policy (December 2003).

Recommendations: None.

Element 5 - Degree to which state enforcement actions require complying action that will return facilities to compliance in a specific time frame.

Findings: EPA reviewed sixteen enforcement files as part of the TDEC RCRA SRF file review. In 15 of the 16 cases reviewed, the facilities returned to compliance before the date of the final

enforcement action. In the remaining case, after the facility reported a spill, TDEC performed an additional investigation before a return to compliance could be achieved before the order was issued.

In all of the cases reviewed, TDEC issued an informal enforcement response (i.e., Notice of Violation) within 150 days of the initial day of inspection. In 15 (94%) of the cases, the facilities returned to compliance prior to entering into a formal consent order, so there were no compliance actions necessary in the enforcement actions. For the one case, the return to compliance took longer than 150 days because the facility had an acid spill and had to conduct soil clean up activities.

Citation of information reviewed for these criteria:

- TDEC enforcement files
- RCRAInfo Data

Recommendation: None.

Element 6 - Degree to which the state takes enforcement actions, in accordance with national enforcement response policies relating to specific media, in a timely and appropriate manner.

Findings: The RCRA Enforcement Response Policy (ERP) designates the following time lines for responding to significant noncompliers (SNCs):

- Day 150 - by this number of days after the first day of inspection, the state (implementing agency) should determine if formal enforcement action is required (identifying the violating facility as a SNC);
- Day 240 - by this number of days after the first day of inspection, the state should issue its unilateral or initial order, if appropriate;
- Day 360 - by this number of days after the first day of inspection, the state should enter into a final order with the violator, or make a referral to the State's attorney General office.

The ERP recognizes circumstances that may dictate an exceedance of the standard response times, such as multimedia cases, national enforcement initiatives, additional sampling or information needs, etc. A ceiling of 20% of cases per year may exceed the above time lines.

TDEC issues Director's Orders (DO's) which include penalties that do not exceed $25,000. Commissioner's Orders (CO's) are orders which include penalties exceeding $25,000. CO's are routed through and reviewed by the Office of General Counsel prior to issuance by the Commissioner. DO's and CO's that are appealed may result in an Agreed Order that is signed by the Solid Waste Disposal Control Board or in a hearing before the Board.

In the sixteen TDEC enforcement files that were reviewed, fourteen (87%) of the enforcement actions met the RCRA ERP timelines. The other two orders (13%) were CO's that exceeded Day 360. Because OGC is a separate Department in TDEC handling different kind of cases (not only RCRA), CO's tend to lengthen the time to settle cases.

TDEC has a consistent and timely RCRA enforcement process. Violations are addressed and resolved quickly, and the process is implemented consistently.

Citation of information reviewed for these criteria:

- Hazardous Waste Civil Enforcement Response Policy (December 2003)
- TDEC facility files
- RCRAInfo data

***Recommendation*:** It is recommended that TDEC establish enforcement response timeframes with OGC ensure timely resolution of enforcement actions.

TDEC Response: OGC has established procedures and timeframes. However, all cases received by OGC must be assigned a priority and moved towards resolution accordingly. Due to the large number of cases OGC handles in any given time period, resolution cannot always be met within the desired timeframe.

Element 7 - Degree to which the State includes both gravity and economic benefit calculations for all penalties.

Findings: Although, TDEC always considers gravity and economic benefit components when calculating penalties, of the sixteen enforcement files reviewed, TDEC only had calculated and documented economic benefit in one case (6%). In the additional fifteen cases (94%), the economic benefit component was considered but not calculated. TDEC had determined that those facilities did not gain economic benefit for non-compliance. If TDEC determined that the facilities did not gain economic benefit for non-compliance, then this factor was not included in the penalty calculation documentation.

Citation of information reviewed for these criteria:

- TDEC RCRA enforcement files.

Recommendations: TDEC should calculate and document the consideration of the economic benefit of noncompliance in each enforcement action. The documentation should take place even in cases where no economic benefit was gained by the facility.

TDEC Response: Since this SRF was conducted, TDEC has put in place procedures that require all enforcement programs to conduct an economic benefit review for all enforcement cases. Enforcement files will clearly document that economic benefit was considered. If an economic benefit penalty was included in the penalty, the file will show how it was calculated, and if not included in the penalty, the file will state the reason for not including an economic benefit component.

Element 8 - Degree to which final enforcement actions (settlements or judicial results) take appropriate action to collect economic benefit and gravity portions of a penalty, in accordance with penalty policy considerations.

Findings: As mentioned in Element 7 above, 94% of the final enforcement actions had penalty calculations that documented a gravity component, but did not document economic benefit calculations.

TDEC considers the economic benefit from noncompliance in each penalty calculation. However, based on conversation with TDEC, it was determined that the facilities did not gain economic benefit for non-compliance, so this factor was not included in the documentation.

Citation of information reviewed for these criteria:

- TDEC enforcement files
- RCRAInfo data.

***Recommendations*:** TDEC should calculate and document the consideration of the economic benefit of noncompliance in each enforcement action. The documentation should take place even in cases where no economic benefit was gained by the facility.

TDEC Response: Since this SRF was conducted, TDEC has put in place procedures that require all enforcement programs to conduct an economic benefit review for all enforcement cases. Enforcement files will clearly document that economic benefit was considered. If an economic benefit penalty was included in the penalty, the file will show how it was calculated, and if not included in the penalty, the file will state the reason for not including an economic benefit component.

Element 9 - Enforcement commitments in the PPA/PPG/categorical grants (written agreements to deliver product/project at a specified time), if they exist, are met and any products or projects are complete.

Findings: In a report dated December 20, 2006, TDEC submitted an End-of-Year Report for the hazardous waste management program describing the progress toward meeting the RCRA FY2006 grant commitments. The compliance and enforcement commitments and work achievements are shown in the attachment titled "Table 1." It should be noted that the grant commitments were based on TDEC's knowledge of the RCRA regulated universes at the time of the FY2006 grant workplan submittal. The OECA SRF RCRA data metrics for Tennessee SRF report used different data pull criteria from RCRAInfo, which resulted in different universes of facilities.

Table 1 - TDEC RCRA 2006 End-of-Year Report (excerpt)

	FY 06 Commitments	FY 06 Accomplishments
A. TSDF INSPECTIONS		
CEIs	40	38
CMEs	0	0
O&Ms	6	6
B. OTHER INSPECTIONS		
LQGs & Transporters	79	129
SQGs	103	131
Special in Support of EPA	5	26
Other inspections, Complaint Investigations and Emergency Response Activities.	34	210
Support of Criminal Program	2	3
Follow-Up (CSE)	*90	158
Used Oil Processors	4	16
Used Oil Marketers /Transporters	5	14
SNCs	*	42
EARs	*	49
Formal Enforcement Actions	*20	26
Warning Letters	*5	20
Show Cause/Informal Meetings	*8	32
Appealed Orders	*	0

*** Only projections for these categories, not commitments**

TDEC continues to meet and exceed almost all its grant workplan requirements. For fiscal year 2006, TDEC only fell short on the TSDF CEIs commitment. TDEC performed 38 TSDF CEIs of the committed 40 inspections. The two facilities that TDEC did not inspect to complete the commitment were Clean Harbors and Nuclear Fuel Services (NFS). Clean Harbors had closed prior to the projected inspection date and NFS was in the peak of an ongoing strike when the inspection was scheduled and could not be inspected before the end of the fiscal year.

The committed six Operating & Maintenance (O&M) Inspections for TSDFs were satisfied. TDEC inspected approximately 23% of its LQG universe and 18% of its SQG, which far exceeds grant requirements that require 20% of the LQG universe and 15% of the SQG universe to be inspected. Also, the 158 follow-up (CSE) inspections far exceeded the projection of 90. TDEC also completed 80 Conditionally Exempt Small Quantity Generator (CESQG)

inspections included under "other inspections" category in the workplan. The committed inspection numbers of 4 Used Oil Processors and 5 Used Oil Marketers/Transporters were met.

Regarding enforcement, TDEC does not have commitments but projections which are far exceeded for each category. TDEC projected 20 and completed 26 Formal Enforcement Actions, consisting of 24 DO's and 2 CO's. For Informal Enforcement, TDEC projected 5 and completed 20 Warning Letters and projected 8 Show Cause/Informal Meetings and completed 32. TDEC determined 42 facilities to be SNCs for fiscal year 2006 and completed 42 Enforcement Action Requests (EARs).

Citation of Information Reviewed for these Criteria:

- TDEC RCRA FY2006 End-of-Year Report
- OECA RCRA SRF Data Metrics
- OECA FY2006 NPM Guidance.

***Recommendations*:** A reviewed of the State Review Framework Metrics showed that the universe for TSDF, LQG and SQG are 24, 556 and 728 facilities, respectively. TDEC's grant workplan for FY2006 shows that the universe for TSDF, LQG and SQG are 56, 395 and 685 facilities. Because of these differences, the percentages of inspection coverage (TSDF, LQG, and SQG) in the SRF Metrics vary from the TDEC FY2006 End of Year Report. TDEC should maintain an accurate account of all universes in RCRAInfo, including TSDs (operating, full enforcement, etc.) as well as active generator status.

TDEC Response: TDEC concurs with this recommendation.

Element 10 - Degree to which the Minimum Data Requirements are timely.

Findings: The RCRA Enforcement Response Policy states that SNC data should be entered when compliance determinations are made, but no later than 150 days from day zero or the first day of the inspection. This provision is included so that no SNC entry is withheld until enforcement is completed, and therefore not tracked for timely enforcement response.

The OECA SRF Data Metrics indicate that one (3.8%) was entered greater than 60 days. The file review indicated that on average the SNC determination was entered on 10 days.

SRF Data Metric review indicated that of the twenty-six (26) SNY determinations, one SNY determination was over 60 days. This case involved a Florida transporter that on April 30, 2004, TDEC conducted a Non-Financial Record Review and found that the transporter had an incomplete annual report and certification for transporter of used oil. No "returned to compliance" has been entered.

Citation of Sources Reviewed:

- OECA SRF Data Metrics
- RCRAInfo data

Recommendation: None.

Element 11 - Degree to which the Minimum Data Requirements are accurate.

Findings: The following discussion addresses the findings of the RCRA State Review Framework Metrics for data accuracy.

- Metric 11(a)(1) - This metric measure the "closeness" between SNC determination and formal enforcement actions. The ERP states that the data should be entered when the determination is made, and SNC entry should not be withheld until the action is completed. The metric indicates that during FY2006, there were no TDEC RCRA SNC determinations made on the same day as formal enforcement actions.

- Metric 11(a)(2) - This metric also measures the "closeness" between SNC determination and formal enforcement actions. The metric indicates that during FY2006, there were no TDEC RCRA SNC determinations made within one week of formal enforcement actions.

- Metric 11(b) - This metric measures the longstanding secondary violations that are not "returned to compliance" or redesignated as SNC. According to the data metric, in TDEC there was one facility that was in violation for greater than three years.

The reason why one facility is in violation for greater than three years, this case involved a Florida transporter that in April 30, 2004, TDEC conducted a Non-Financial Record Review and found that the transporter had an incomplete annual report and certification for transporter of used oil. No "returned to compliance" has been entered.

Citation of Information Reviewed for these Criteria:

- RCRA State Review Framework Metrics.

Recommendations: None

Element 12 - Degree to which the Minimum Data Requirements are complete, unless otherwise negotiated by the Region and State or prescribed by a national initiative.

Findings: This element provides data metrics on active facility universes in TDEC, inspection, violation and SNCs counts for FY2006, as well formal enforcement actions and penalties. This data is provided to TDEC for comment and review.

A review of the State Review Framework Metrics showed that the universe for TSDF, LQG and SQG are 24, 556 and 728 facilities, respectively. TDEC's grant workplan for FY2006 shows that the universe for TSDF, LQG and SQG are 56, 395 and 685 facilities.

Recommendations: TDEC needs to verify and update facility status codes in RCRAInfo.

TDEC Response: TDEC concurs with this recommendation.

Citation of information reviewed for these criteria:

- OECA RCRA State Review Framework Metrics